IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7083 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LAJPATRAI HARIRAM MEHTA

Versus

COLLECTOR

Appearance:

MR KR RAVAL for Petitioner

MR AJ DESAI AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 05/12/2000

ORAL JUDGEMENT

1. I have heard learned counsel Mr. K.R. Raval appearing on behalf of the petitioner and Mr. Ashish J. Desai learned A.G.P. appearing on behalf of the respondents.

2. The petitioner challenges the order of the Collector of Kheda District bearing Supplementary Inquiry Case NO.Supply/TPS/Case No.58 of 1996 dt.28/10/1996, confiscating 100% stock of groundnut oil and soyabean oil worth Rs.1,52,060/-. The petitioner filed an appeal against the aforesaid order of the Collector to the Government and in appeal the, Government by order dtd. 15/6/1998 passed in Appeal No.APL/1096/3937/J, confirmed the order of the Collector. Having felt aggrieved by the orders of the Government in Appeal and original order passed by the Collector, the petitioner has filed this petition for quashing and setting aside the confiscation orders passed by the aforesaid authorities.

3. The learned counsel for the petitioner submitted that the Collector as well as the Government in their order observed that the sale of groundnut oil and soyabean oil by the petitioner is not illegal, but the petitioner has sold the groundnut oil and soyabean oil without issuing cash memo. Apart from the aforesaid irregularities, there were other irregularities indicated by both the authorities namely the Collector and the State Government that the petitioner is not maintaining Sale Register properly. The learned Counsel for the petitioner submitted that the Collector in his order held that the irregularities committed by the petitioner is of common and technical in nature and since the irregularities are not committed with malafide intention, the explanation given by the petitioner is satisfactory. Accordingly the learned counsel for the petitioner submitted that while the petitioner has committed technical irregularities, the Collector or the Government should not have confiscated the entire quantity of groundnut oil and soyabean oil worth Rs.1,52,060/-. The learned counsel has also drawn my attention to the said findings recorded by the Collector and the State Government. It appears from the order passed by the State Government in appeal that the petitioner is doing business without preparing bills. The petitioner has purchased the stock under the bills and has credited the same in the stock register. However, it is not understandable as to what may be the object of selling the stock by the petitioner without bills thereafter. In the instant case, the Collector, Kheda District has ordered to forfeit total stock of 220 tins of groundnut oil and 46 tins of soyabean oil which was seized at the time of inquiry and therefore the Government did not interfere in the order of the Collector. After going through the order passed by the Government in appeal, I am of the view that the Government has not independently applied its mind while deciding the appeal on the contrary it appears that the

Government was influenced with the decision of the Collector and without any discussion, confirmed the order of the Collector.

4. Mr. Ashish J. Desai learned A.G.P. appearing on behalf of the respondents has submitted that the Collector as well as the Government, after considering the facts and circumstances and in light of the explanation put forward by the petitioner, have passed the order and therefore, there is no reason to interfere with the order passed by the Government in appeal. It is also submitted by learned AGP that there is no error of law apparent on the face of the record which can be corrected by this Court under writ petition.

5. It is evident from the impugned order that the defence raised by the petitioner have not been considered by the concerned authorities. Under Sec.6(B) of the Essential Commodities Act, 1955, a reasonable opportunity of being heard is required to be given before making any order confiscating any essential commodities under Sec.6(A) of the Act. Such reasonable opportunity follows the Show Cause Notice informing the person from whom the commodities is seized, and the grounds on which confiscation is proposed. It, therefore, follows that any material on which reliance is to be placed, must be disclosed to the person on whom show cause notice is issued to enable him to have an opportunity of being heard in the matter. It is also incumbent upon the authorities to look into the defence raised by the petitioner with a view to come to a conclusion whether confiscation would be justified or not. In the instant case admittedly there is no finding regarding black marketing or hoarding has been committed by the petitioner, even no such allegations are also available on record. If there is no intention of black marketing or hoarding on the part of the person committing breach of the condition of the order, the authority should exercise the discretion in proper manner. In the instant case, it appears that the petitioner has been alleged to have committed violation regarding non-maintaining of registers properly and he has sold groundnut oil and soyabean oil without preparing any bill, and therefore I am of the view that before confiscating the entire stock of the petitioner, an opportunity should have been given by the authorities to the petitioner regarding quantum of confiscation, that can be made for committing such irregularities. It has been held by this Court in different cases that while allegations against dealer are not serious, liberal view should be taken in the matter of confiscation. In the instant case, it appears that

100% confiscation may not be a good ground to meet the ends of justice. In the present case, the concerned authorities have dealt with the mater rather casually and have not considered the defence raised by the petitioner before coming to the conclusion that the entire stock of the petitioner are required to be confiscated. The impugned orders are, therefore, hereby quashed and set aside and the matter is remanded back to the Collector Kheda District for afresh consideration in accordance with law. Rule is made absolute accordingly with no order as to costs.

(P.K. SARKAR, J.)

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